



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[MM Docket No. 99-25; FCC 12-28]**

**Implementation of the Local Community Radio Act of 2010; Revision of Service and Eligibility Rules for Low Power FM Stations**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; denial of petitions for reconsideration.

**SUMMARY:** In this document, the Commission modifies its rules in order to implement provisions of the Local Community Radio Act of 2010 (“LCRA”) that unambiguously require the Commission to eliminate its third-adjacent channel spacing requirements and to maintain the spacing requirements currently in place to protect radio reading services. The Commission also dismisses and/or denies various petitions for reconsideration of the Third Report and Order in MM Docket No. 99-25 and terminates a Second Further Notice of Proposed Rulemaking in that docket.

**DATES:** Effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Peter Doyle (202) 418-2789.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's document in MM Docket No. 99-25, FCC No. 12-28, adopted March 19, 2012. A synopsis of the proposed rulemaking segment of this decision will be published in a later issue of the Federal Register. The full text of the Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration is available for inspection and copying during normal business

hours in the FCC Reference Center (Room CY-A257), 445 12<sup>th</sup> Street, S.W., Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>.

Paperwork Reduction Act Analysis. This Report and Order does not adopt any new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13 (44 U.S.C. 3501-3520). In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Report to Congress. The Commission will send a copy of this Fifth Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

## **Summary of Fifth Report and Order and Fourth Order on Reconsideration**

### **I. INTRODUCTION**

1. In the Fifth Report and Order, we modify our rules to implement certain provisions of the Local Community Radio Act of 2010 (“LCRA”), which unambiguously require the Commission to eliminate its third-adjacent channel spacing requirements and to maintain the spacing requirements currently in place to protect radio reading services. In the Fourth Order on Reconsideration, we dismiss in part and deny in part a petition for reconsideration of the Third Report and Order in this docket, which the Commission released in 2007, and terminate the Second Further Notice of Proposed Rulemaking (Second FNPRM) that accompanied that order.

### **II. BACKGROUND**

2. In January 2000, the Commission adopted a Report and Order establishing the LPFM service. In doing so, the Commission sought “to create a class of radio stations designed to serve

very localized communities or underrepresented groups within communities.” The Commission created two classes of LPFM facilities. The LP100 class consists of stations with a maximum power of 100 watts effective radiated power (“ERP”) at 30 meters antenna height above average terrain (“HAAT”), providing an FM service radius (1 mV/m or 60 dBu) of approximately 3.5 miles. The LP10 class consists of stations with a maximum of 10 watts ERP at 30 meters HAAT, providing an FM service radius of approximately one to two miles. “[T]o preserve the integrity and technical excellence of existing FM radio service,” the Commission adopted separation requirements for LPFM stations operating on co-, first- and second-adjacent channels to full-service FM, FM translator and FM booster stations. The Commission, however, declined to impose third adjacent channel distance separation requirements, and declined to adopt special protections for radio reading services. The Commission specified that LPFM stations operate on a “secondary” basis. In other words, LPFM stations generally cannot cause interference to existing and future full-service FM and other “primary” stations and are not protected against interference from these stations.

3. To ensure that any new LPFM service included the voices of community-based schools, churches and civic organizations, the Commission established ownership and eligibility rules for the LPFM service. Specifically, the Commission restricted LPFM service to noncommercial educational (“NCE”) operations, and restricted licensee eligibility to applicants with no attributable interests in any other broadcast station or other media subject to the Commission’s ownership rules. The Commission also limited eligibility to local entities during the first two years LPFM licenses were available. To choose among entities filing mutually exclusive applications for LPFM licenses, the Commission adopted a point system that favors local ownership and locally-originated programming, with ties between competing applicants resolved

by either voluntary time-sharing agreements between such applicants or, in the event that the applicants cannot agree, the imposition of “involuntary time-sharing,” with each tied and grantable applicant awarded an equal, successive and non-renewable license term of no less than one year, for a combined total eight-year term.

4. In September 2000, the Commission adopted a Memorandum Opinion and Order on Reconsideration. In the Reconsideration Order, the Commission revised and clarified some of its LPFM rules, including the local program origination criterion adopted for the point system. The Commission again declined to impose third-adjacent channel separation requirements. Instead, it adopted complaint and license modification procedures to address any unexpected, significant third-adjacent channel interference problems caused by LPFM stations. It also modified the spacing standards to protect radio reading services and adopted procedures for addressing any interference caused by an LPFM station to the input signal of an FM translator or FM booster station.

5. Shortly thereafter, in December 2000, Congress enacted the Making Appropriations for the Government of the District of Columbia for FY 2001 Act (“2001 D.C. Appropriations Act”). Therein, Congress directed the Commission to prescribe third-adjacent channel spacing requirements for LPFM stations, which the Commission did in April 2001. Congress also directed the Commission to conduct an experimental program to evaluate the likelihood of interference to existing full-service FM stations and FM translator stations if LPFM stations were not subject to third-adjacent channel spacing requirements, and to submit a report that included the Commission’s recommendations regarding reduction or elimination of the spacing requirements for third-adjacent channels. The Commission selected an independent third party, the Mitre Corporation (“Mitre”), to conduct field tests. Mitre submitted a report to the

Commission, which, in turn, sought comment on the report. In February 2004, the Commission submitted a report to Congress on this issue. Based on the Mitre study, the Commission recommended that Congress “modify the statute to eliminate the third-adjacent channel distan[ce] separation requirements for LPFM stations.”

6. In March 2005, the Commission adopted a Second Order on Reconsideration and Further Notice of Proposed Rulemaking. In the Second Order, the Commission modified some of the rules governing the LPFM service, noting that the rules needed adjustment in light of the experiences of LPFM applicants and licensees. In the accompanying FNPRM, the Commission sought comment on a number of issues with respect to LPFM ownership restrictions and eligibility. The Commission also proposed certain changes to the rules governing the formation and duration of voluntary and involuntary time-sharing arrangements among mutually exclusive LPFM applicants. Finally, the Commission sought comment on a number of changes to the LPFM technical rules.

7. In December 2007, the Commission released the Third Report and Order and Second FNPRM. In the Third Report and Order, the Commission resolved the issues raised in the FNPRM. Among other things, the Commission set forth an interim processing policy that it would use to consider requests for waiver of the second-adjacent channel spacing requirements from certain LPFM stations, reinstated the local ownership requirement, and clarified its definition of local origination. The Commission also modified the rules governing the formation and duration of voluntary and involuntary time-sharing arrangements among mutually exclusive LPFM applicants. In the Second FNPRM, the Commission proposed certain rule changes designed to avoid the potential loss of LPFM stations. The Commission made these proposals “[i]n light of changed circumstances since [it] last considered the issue of protection rights for

LPFM stations from subsequently authorized full-service stations.” The Commission sought comment on whether to codify the procedures for LPFM stations seeking a waiver of the second-adjacent channel spacing requirements, whether rule changes were warranted to provide additional flexibility to propose LPFM station modifications, whether to require full-service new station and modification applicants to provide technical and/or financial assistance to potentially impacted LPFM stations, whether to adopt contour protection-based licensing standards for LPFM stations, and whether to modify the LPFM-FM translator protection priorities.

8. On January 4, 2011, President Obama signed the LCRA into law. Through the LCRA, Congress expanded LPFM licensing opportunities. Specifically, Congress repealed the requirement that LPFM stations operate a minimum distance from nearby stations operating on third-adjacent channels, and required the Commission to eliminate its third-adjacent channel minimum distance separation requirements. Congress also authorized the Commission to waive the second-adjacent channel spacing requirements if an LPFM station demonstrates that its proposed operations will not result in interference to any authorized radio service. Further, it set forth criteria that the Commission must take into account when licensing FM translator, FM booster and LPFM stations.

9. As Congress expanded LPFM licensing opportunities, it also took steps to provide enhanced interference protection to existing full-service FM, FM translator and FM booster stations. Specifically, while Congress eliminated the third-adjacent channel spacing requirements, it required the Commission to retain the spacing requirements that apply to LPFM stations operating on a third-adjacent channel to FM stations that broadcast radio reading services. Congress also required the Commission to modify its rules to “address the potential for predicted interference to FM translator input signals on third-adjacent channels,” and to modify

the interference protection and remediation requirements applicable to LPFM stations operating on third-adjacent channels.

### **III. FIFTH REPORT AND ORDER**

10. The LCRA unambiguously requires the Commission to eliminate its third-adjacent channel spacing requirements and to maintain the spacing requirements currently in place to protect radio reading services. We do so in this Fifth Report and Order. We take these steps without providing prior public notice and comment because they involve no discretion. We merely are revising our rules in the manner specified in the legislation. Notice and comment would serve no purpose and thus are unnecessary. Our actions fall within the “good cause” exception of the Administrative Procedure Act (“APA”).

#### **A. Third-Adjacent Channel Minimum Distance Separation Requirements**

11. Section 2 of the LCRA amends section 632 of the 2001 D.C. Appropriations Act to delete the requirements that the Commission establish and maintain minimum distance separations for third-adjacent channels. It essentially lays the groundwork for section 3(a) of the LCRA, which requires the Commission to “modify its rules to eliminate third-adjacent minimum distance separation requirements between—(1) low-power FM stations; and (2) full service FM stations, FM translator stations, and FM booster stations.” Section 73.807 of the Commission’s rules currently sets forth these spacing requirements. We hereby delete the provisions requiring protection of third-adjacent channel stations set forth in that section, with the exception of §§ 73.807(a)(2), (b)(2) and (g) of our rules.

#### **B. Protection of Radio Reading Services**

12. Radio reading services provide access to printed news and other information sources for blind or print-disabled persons. They are transmitted on one of several standardized subcarrier

frequencies within a 200 kHz FM channel. These transmissions cannot be received on a standard radio. Listeners must use special radios that tune subcarrier signals to receive these services.

When the Commission established the LPFM service in 2000, it initially did not adopt any additional interference protections for radio reading services. The Commission reasoned that subcarrier programming is transmitted within a broadcast station's assigned frequency and thus receives the same protection from interference as the main broadcast programming of the station.

13. The Commission reconsidered this decision shortly thereafter due to concerns about the greater vulnerability of radio reading service receivers to third-adjacent channel interference. It noted that, because of their designs, the subcarrier receivers used for radio reading services are more susceptible to interference than mass marketed receivers. The Commission therefore modified the spacing standards set forth in § 73.807 of the rules to require LPFM stations to satisfy the second-adjacent channel spacing requirements with respect to any third-adjacent channel FM station that broadcasts a radio reading service via a subcarrier frequency.

14. The Commission took this step because, at the time, it had declined to adopt generally applicable third-adjacent channel spacing requirements. It later adopted such requirements at the direction of Congress. These spacing requirements were identical to the second-adjacent channel spacing requirements. Accordingly, while the Commission did not delete the protections specific to FM stations providing radio reading services from the rules, the protections became redundant. Now, however, with the elimination of the third-adjacent spacing requirements, these provisions again have relevance. In this regard, section 4 of the LCRA directs the Commission to "comply with existing minimum distance separation requirements" for stations that broadcast radio reading services. Accordingly, we conclude that we must retain without modification §§ 73.807(a)(2) and (b)(2) of our rules to implement section 4.



#### **IV. FOURTH ORDER ON RECONSIDERATION**

15. As noted above, in the Third Report and Order, the Commission adopted an interim waiver processing policy. The Commission also revised § 73.809 and other provisions of the rules in order to protect and preserve the LPFM service. Ace Radio Corporation (“Ace Radio”) filed a petition for reconsideration (“Ace Radio Petition”) of the Third Report and Order, which opposed both the interim waiver processing policy and the revisions made to § 73.809. For the reasons discussed below, we deny in part the Petition and defer consideration of the remainder of the Ace Radio’s arguments.

16. Ace Radio challenges the interim waiver processing policy. However, in the Fourth FNPRM, we tentatively conclude that section 3(b)(2) of the LCRA supersedes this policy. We believe it is appropriate to defer consideration of Ace Radio’s arguments regarding the interim waiver processing policy until we have resolved this issue. To the extent Ace Radio’s arguments remain relevant, we will consider them at that time.

17. We reject Ace Radio’s arguments regarding our revisions to § 73.809 of the rules to remove second-adjacent channels from the interference complaint procedures set forth therein. Ace Radio first argues that it did not have an opportunity to comment on the Commission’s proposal to modify § 73.809 of the rules to remove second-adjacent channels from the rule. It also asserts that the revisions to § 73.809 are not justified by the record and, when coupled with the Commission’s interim waiver processing policy, will allow LPFM stations to operate within a full-service station’s 70 dBu contour, resulting in interference holes, otherwise known as the “swiss cheese” effect.

18. The Commission provided ample public notice that it was considering modification of § 73.809 of the rules to remove second-adjacent channels. In the FNPRM, the Commission

explicitly raised the issue of “encroachment” and whether a relaxation of the second-adjacent channel interference restrictions found in § 73.809 of the rules was necessary to prevent LPFM stations from being displaced. While Ace Radio argues that “the number of city of license applications filed does not justify [the Commission’s] action,” it fails to raise any facts or questions of law showing that the Commission’s decision was incorrect. Contrary to Ace Radio’s suggestion that the number of LPFM stations at risk of displacement is insignificant, the Bureau identified 44 LPFM stations that could be forced to cease operations as a result of the filing activity resulting from the January 2007 lifting of the freeze on the filing of FM community of license modification proposals combined with the implementation of new streamlined licensing procedures.

19. We also note that Ace Radio has mischaracterized the effects this rule modification will have on signal reception within a full-service station’s 70 dBu contour. The diagram provided by Ace Radio portrays the full 60 dBu contour of 118 hypothetical LPFM stations within the 70 dBu contour of a full-service station. The fact that an LPFM station has a 60 dBu contour on a second- or third-adjacent channel inside the 70 dBu contour of a full-service station does not establish that the LPFM station would cause interference. Any potential interference received by the full-service station would be only in the immediate vicinity of the low-power transmitter site, and can be substantially reduced or eliminated through various technical measures. Finally, contrary to Ace Radio’s assertion, the Commission did not, in its modification of Section 73.809, remove the second-adjacent restriction for the general allocation processes for LPFMs. Rather, this rule change is limited to situations involving a full-service station that is authorized subsequent to an LPFM station. As such, Ace Radio’s concerns are without merit.

## **V. TERMINATION OF SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

20. As noted above, the Commission issued a Second FNPRM in 2007. We find that all of the proposals made in the Second FNPRM are either inconsistent with or otherwise mooted by the LCRA. Specifically, the Commission proposed to codify the interim processing policy for second-adjacent channel waiver requests that it adopted in the Third Report and Order. However, in the Fourth FNPRM, we conclude that the second-adjacent channel waiver provisions of the LCRA supersede this interim policy. Accordingly, we find the Commission's proposal to codify the interim policy to be moot and will not pursue it further. Similarly, we find the Commission's proposal to adopt a contour overlap interference protection approach to be statutorily barred by section 3(b)(1) of the LCRA, which prohibits the Commission from modifying the current co-channel and first- and second-adjacent channel distance separation requirements. We will not pursue this proposal either. Finally, the Commission proposed certain rule changes related to LPFM station displacement, the obligations of full-service new station and modification applicants to potentially impacted LPFM stations, and LPFM-FM translator protection priorities. We believe that Congress's adoption of the LCRA renders pursuit of those earlier proposals unnecessary at this time. Thus, we will not move forward with any of them. Given our findings regarding each of the proposals set forth by the Commission in the Second FNPRM, we consider the Second FNPRM to have been concluded.

## **VI. ADMINISTRATIVE MATTERS**

### **A. Congressional Review Act**

21. The Commission will send a copy of this Fifth Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

## VII. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to the authority contained in the Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011), and sections 1, 2, 4(i), 303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i), 303, 307, and 309(j), that this Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration IS ADOPTED.

23. IT IS FURTHER ORDERED that pursuant to the authority contained in the Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011), and sections 1, 2, 4(i), 303, and 307 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, and 307, the Commission's rules ARE HEREBY AMENDED. It is our intention in adopting these rule changes that, if any provision of the rules is held invalid by any court of competent jurisdiction, the remaining provisions shall remain in effect to the fullest extent permitted by law.

24. IT IS FURTHER ORDERED that the rules SHALL BE EFFECTIVE **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

25. IT IS FURTHER ORDERED that the Petition for Rulemaking filed by REC Networks on July 16, 2004, IS HEREBY DISMISSED, and Proceeding No. PRM-04-MB IS TERMINATED.

26. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Ace Radio Corp. on February 19, 2008, IS DENIED IN PART.

27. IT IS FURTHER ORDERED that the Second Further Notice of Proposed Rulemaking in MM Docket No. 99-25 IS TERMINATED.

28. IT IS FURTHER ORDERED that the Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration, including the

Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, and shall cause it to be published in the Federal Register.

**List of Subjects in 47 CFR Part 73**

Radio.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,  
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 to read as follows:

## **PART 73 – RADIO BROADCAST SERVICES**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

2. Section 73.807 is amended by revising the introductory text to read as follows:

### **§ 73.807 Minimum distance separation between stations.**

Minimum separation requirements for LP100 and LP10 stations, as defined in §§ 73.811 and 73.853, are listed in the following paragraphs. An LPFM station will not be authorized unless the co-channel, first- and second-adjacent and IF channel separations are met. An LPFM station need not satisfy the third-adjacent channel separations listed in paragraphs (a) through (d) in order to be authorized. Minimum distances for co-channel and first-adjacent channel are separated into two columns. The left-hand column lists the required minimum separation to protect other stations and the right-hand column lists (for informational purposes only) the minimum distance necessary for the LPFM station to receive no interference from other stations assumed to be operating at the maximum permitted facilities for the station class. For second-adjacent channel and I.F. channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

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